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**OFFICE OF PETITIONS**

In re Application of :  
Ogura et al. : DECISION ON APPLICATION  
Application No. 09/846,310 : FOR  
Filed: May 1, 2001 : PATENT TERM ADJUSTMENT  
Attorney Docket No. :  
1998/F 130 (8577\*24) :

This is a decision on the "REQUEST FOR PATENT TERM ADJUSTMENT," filed December 13, 2004. Applicants request that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from three hundred sixty-nine (369) days to four hundred sixty (460) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **FIVE HUNDRED THIRTY-SEVEN (537)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 1, 2004, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicants were advised that the patent term adjustment to date is 369 days.

In response, applicants timely<sup>1</sup> filed the instant request for reconsideration of the patent term adjustment along with payment

<sup>1</sup> PALM Records indicate that the Issue Fee payment was received in the Office on January 4, 2005.

of the fee set forth in 37 CFR § 1.18(e). Applicants request that the patent term adjustment be corrected to 460 days. Applicants dispute the reduction of 91 days for applicant delay in responding to the Office action mailed November 4, 2003. Applicants state that their response was received in the Office on December 8, 2003, and thus, there was no delay within the meaning of § 1.704(b). In support thereof, applicants submitted a copy of their itemized and date-stamped return postcard, which shows that a response to the November 4, 2003 Office action was received in the Office on December 8, 2003.

The record supports a conclusion that the patent issuing from the application is not subject to a terminal disclaimer.

A review of the application history reveals that applicants are correct. The response to the Office action mailed November 4, 2003, was shown to have been received in the Office within the three-month period set forth in § 1.704(b), and thus, there was no applicant delay.

Thus, the period for the Office taking action began to run upon receipt of the response on December 8, 2003. However, the Office failed to respond within four months. A non-final Office action was not mailed until June 24, 2004. Accordingly, a period of delay of 77 days, counting the number of days in the period of delay beginning on April 9, 2004, the day after the date that is four months after the date a reply under § 1.111 was filed, to June 24, 2004, the date of mailing of the non-final Office action should have been entered. See § 1.703(a)(2).

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is 537 days (568 - 31).

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

The application is being forwarded to the Office of Patent Publication for issuance of the application.

Telephone inquiries regarding this matter should be directed to Senior Petitions Attorney Nancy Johnson at (571) 272-3219.

*Karin Ferriter*

Karin Ferriter  
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Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of updated PAIR screen